

20-8179 ORIGINAL

No.

Supreme Court of the United States

CHAD ALAN SODERMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

FILED

MAY 17 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

**MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS**

COMES NOW PETITIONER CHAD ALAN SODERMAN and respectfully moves this Honorable Court for leave to proceed in forma pauperis, in accordance with the provisions of Title 28, United States Code, Section 1915, and Rule 39 of the Rules of this Court.

The affidavit of Chad Alan Soderman in support of this motion is attached hereto.

Mr. Soderman sought leave to proceed in forma pauperis in the court below.

Mr. Soderman was granted leave to proceed in forma pauperis in the court below.

The statute under which Mr. Soderman was appointed counsel by the Southern District of Iowa was the Criminal Justice Act of 1964, 18 U. S. C. § 3006A. Therefore, in reliance upon Supreme Court Rule 39.1 and 18 U.S.C. § 3006A(d)(7), petitioner has *not* attached the affidavit which would otherwise be required.**

Presented herewith is Mr. Soderman's Petition for Writ of Certiorari to the Court of Appeals for the Eighth Circuit.

Chad Alan Soderman
Petitioner
44905-013
9595 West Quincy Avenue
Littleton, CO 80123

Date: _____

** Supreme Court Rule 39.1 provides:

A party seeking to proceed in forma pauperis shall file a motion for leave to do so, together with the party's notarized affidavit or declaration (in compliance with 28 U.S.C. § 1746) in the form prescribed by the Federal Rules of Appellate Procedure, Form 4. The motion shall state whether leave to proceed in forma pauperis was sought in any other court and, if so, whether leave was granted. *If the United States district court or the United States court of appeals has appointed counsel under the Criminal Justice Act of 1964, 18 U.S.C. § 3006A, or under any other applicable federal statute, no affidavit or declaration is required, but the motion shall cite the statute under which counsel was appointed.*" *Id.* (As Amended Jan. 27, 2003, eff. May 1, 2003.) (emphasis added)

18 U.S.C. § 3006A(d)(7) provides:

(7) Proceedings before appellate courts. If a person for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ of certiorari, he may do so without prepayment of fees and costs or security therefor and *without filing the affidavit required by section 1915(a) of title 28. Id.* (emphasis added)

General Docket
Eighth Circuit Court of Appeals
Court of Appeals Docket #: 19-2879
United States v. Chad Soderman
Appeal From: U.S. District Court for the Southern District of Iowa - Council Bluffs
Fee Status: In Forma Pauperis

* * * * *

09/12/2019 CLERK ORDER: Granting [4827948-2] motion for appointment of counsel filed by Mr. Christopher James Roth. Christopher James Roth for Chad Alan Soderman, in case 19-2879 was added as appointed counsel. [4829655] [19-2879] (RLS) [Entered: 09/12/2019 09:39 AM]

20-8179

No.

ORIGINAL

Supreme Court of the United States

CHAD ALAN SODERMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORIGINAL

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

FILED

MAY 17 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

**Chad Alan Soderman
Petitioner
44905-013
9595 West Quincy Avenue
Littleton, CO 80123**

QUESTIONS PRESENTED

1.) Whether the Fourth Amendment was violated under *Rodriguez v. United States*, 575 U.S. 348 (2015) where individual acts by police to investigate a crime, unrelated to a traffic stop and unsupported by reasonable suspicion, extended the overall time of the traffic stop?

2.) Where multiple additional errors affected petitioner's conviction and/or sentence in the courts below, should this Court exercise its supervisory power to vacate his conviction and sentence?

PARTIES TO THE PROCEEDINGS

IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Eighth Circuit.

More specifically, the Petitioner Chad Alan Soderman and the Respondent United States of America are the only parties. Neither party is a company, corporation, or subsidiary of any company or corporation.

TABLE OF CONTENTS

	<u>Page:</u>
Questions Presented	i
List of Parties to the Proceedings in the Courts Below	ii
Table of Contents	iii
Table of Authorities	v
Petition for a Writ of Certiorari	1
Opinions Below	1
Statement of Jurisdiction	2
Constitutional Provisions, Treaties, Statutes, Rules, and Regulations Involved	3
Statement of the Case	4
Reasons for Granting the Writ	8
1.) THIS COURT SHOULD GRANT MR. SODERMAN’S PETITION FOR WRIT OF CERTIORARI BECAUSE THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT’S POWER OF SUPERVISION	8
1A.) The Fourth Amendment Was Violated Under <i>Rodriguez v. United States</i>, 575 U.S. 348 (2015) Where Individual Acts By Police To Investigate A Crime, Unrelated To A Traffic Stop And Unsupported By Reasonable Suspicion, Extended The Overall Time Of The Traffic Stop	9
1B.) Multiple Errors In The Courts Below Mandate That Mr. Soderman’s Conviction And/Or Sentence Be Vacated	16
Conclusion	18
Appendix	19

USCA Opinion Dated 12-21-20	A
USDC Judgment & Commitment Order Entered 8-20-19.....	B
USCA Denial of Rehearing Dated 1-26-21.....	C
USDC Order Denying Motion to Suppress Entered 1-17-19.....	D
7-7-18 Trooper Raes Report Entered 12-19-18.....	E
7-7-18 Backup Officer Merchant Report Entered 12-19-18	F

TABLE OF AUTHORITIES

	<u>Page:</u>
Cases	
<i>District of Columbia v. Heller,</i> 128 S. Ct. 2783; 171 L. Ed. 2d 637; 2008 U.S. LEXIS 5268 (2008)	16, 17
<i>McNabb v. United States,</i> 318 U.S. 332 (1943)	9, 15
<i>Rodriguez v. United States,</i> 575 U.S. 348, 355; 135 S. Ct. 1609, 191 L. Ed. 2d 492, 499 (2015)	10
<i>United States v. Campbell,</i> 970 F.3d 1342 * 2020 U.S. App. LEXIS 25844 ** (11 th Cir. 2020)	10, 14
<i>United States v. Clark,</i> 902 F.3d 404, 410 (3d Cir. 2018)	11
<i>United States v. Clark,</i> 902 F.3d 404, 410-11 (3d Cir. 2018)	10, 14
<i>United States v. Gomez,</i> 877 F.3d 76, 88-93 (2d Cir. 2017)	10, 14
<i>United States v. Gorman,</i> 859 F.3d 706 715 (9 th Cir. 2017)	10, 14
<i>United States v. Macias,</i> 658 F.3d 509, 518-19 (5 th Cir. 2011)	10, 14

United States v. Morganstern,

No. 2:19-CR-212-DBH,

*2020 U.S. Dist. LEXIS 240746, at *15 (D. Me. Dec. 22, 2020)..... 11*

Statutes

18 U.S.C. § 922(g)(1).....ii, iii, 4, 17

18 U.S.C. § 924(c)(1)(A) passim

21 U.S.C. § 841(a)(1)..... passim

21 U.S.C. § 841(b)(1)(A)..... passim

28 U.S.C. § 1254(1) 2

Other Authorities

Second Amendment 16, 17

U.S.C.A. Fourth Amendment 3, 11, 17

Rules

Supreme Court Rule 10 9

PETITION FOR A WRIT OF CERTIORARI

Chad Alan Soderman, the Petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered in the above entitled case on 12-21-20.

OPINIONS BELOW

The 12-21-20 opinion of the Court of Appeals for the Eighth Circuit, whose judgment is herein sought to be reviewed, is reported at 983 F.3d 369 * | 2020 U.S. App. LEXIS 39884 ** and is reprinted in the separate Appendix A to this Petition.

A petition for rehearing was timely filed and was denied by the Court of Appeals for the Eighth Circuit on 1-26-21. This opinion is an unpublished decision reported at 2021 U.S. App. LEXIS 2198 and is reprinted in the separate Appendix C to this Petition.

The prior opinion and judgment (Judgment & Commitment Order) of the United States District Court for the Southern District of Iowa, was entered on 8-20-19, is an unpublished decision, and is reprinted in the separate Appendix B to this Petition.

The prior opinion of the United States District Court for the Southern District of Iowa Denying Mr. Soderman's Motion to Suppress was entered on 1-17-19, is an unpublished decision, and is reprinted in the separate Appendix D to this Petition.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on 12-21-20. A petition for rehearing was timely filed and was denied by the Court of Appeals for the Eighth Circuit on 1-26-21. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

**CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES,
RULES AND REGULATIONS INVOLVED**

The Fourth Amendment to the Constitution of the United States provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. *Id.*

STATEMENT OF THE CASE

On or about 7-31-18 Chad Alan Soderman was charged with violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(A) (Possession with Intent to Distribute “at least 50 grams of methamphetamine” on or about 7-7-18) (Count 1); 18 U.S.C. § 922(g)(1) (Felon in Possession of a Firearm, to wit, a Kel-Tec, P11, 9mm (serial # AP365) on or about 7-7-18) (Count 2); 18 U.S.C. § 924(c)(1)(A) (Possession of a Firearm in Furtherance of Drug Trafficking, to wit, a Kel-Tec, P11, 9mm (serial # AP365) on or about 7-7-18) (Count 3).

These charges arose from evidence generated through a traffic stop for speeding and the subsequent search of Petitioner’s vehicle AFTER the traffic stop was extended PRIOR to development of reasonable suspicion of a drug crime due to the acts of the arresting officer to investigate said drug crime unrelated to the speeding violation as hereinafter more fully appears.

At about 7:25 AM, Trooper Raes observed and clocked Petitioner Soderman driving his car 72 mph in a posted 55 mph zone on Interstate Highway 80 in Iowa. He activated his emergency lights and stopped Mr. Soderman’s vehicle. Upon checking his license, he discovered it was suspended due to alleged non-payment of child support which apparently surprised and upset Mr. Soderman. At this time, seeing that Mr. Soderman had substantial money in his wallet, Trooper Raes asked Mr. Soderman “how much money he had in his wallet”. Mr. Soderman replied that that was “irrelevant”. (Appendix E, ¶3) Trooper Raes then, apparently by radio, “requested a K9 to come to [his] location but Pottawattamie County sheriff’s office and council Bluffs police department had no K9s available.” *Id.* Finally, Trooper Raes asked Mr. Soderman “what was in the trunk” of his car, *Id.*, and “if there was any illegal items in the vehicle”. (Appendix F, ¶4).

Each of these inquiries was unrelated to the traffic stop for speeding or for possessing a suspended license. These questions were, instead, inquiring about “crime in general [and] drug trafficking in particular.” The questions prolonged the traffic stop by at least several minutes.

At that point, the articulated ‘suspicion’ was limited to the facts that Mr. Soderman had been stopped for speeding, provided his license and proof of insurance promptly, had energy drinks, snacks and a couple bags inside his car, appeared nervous and unkempt, and appeared more nervous after his drivers license came back suspended. (Appendix E) (Appendix F) and Mr. Soderman respectfully submits that the officers did NOT have reasonable suspicion at that point.

He was arraigned on or about 10-17-18 at which time he pleaded not guilty to the charged violations.

On 11-7-18, counsel filed a motion to suppress. In this motion, counsel argued, *inter alia*, that Trooper Raes unlawfully extended the traffic stop. (USDC Docket 1:18-cr-44, Entry # 24-1, PDF pages 7-8)

On 12-17-18, a hearing was held on the motion to suppress. At the hearing the evidence essentially tracked the police reports attached as Appendices E-F. (USDC Docket 1:18-cr-44, Entry # 67)

On 1-17-19, the district court denied the motion to suppress. In denying the motion to suppress, the district court correctly acknowledged that “the “mission” of the stop evolved over its duration” but completely ignored the extensions of the length of the detention by Trooper Raes’ questioning, prior to the arrival of the second officer, about the money in Mr. Soderman’s wallet and by Trooper Raes’ questioning, prior to the arrival of the second officer, about “what was in the trunk” of his car or “if there was any illegal items in the vehicle” and the time Trooper Raes used for calling and searching for “a K9 to come to [Trooper Raes’] location”, prior to the

arrival of the second officer. Instead, the district court simply held that, by the time the second officer, Officer Merchant, finished her investigation and questioning, reasonable suspicion had been established. While the district court held that the time of the stop was not extended by questioning about drugs because one of the officers was still working on the traffic tickets, this would be correct but ONLY after the second officer arrived¹ and then held that, *by the end of the stop*, “they developed a reasonable, articulable suspicion of drug trafficking”. (Appendix D, page 9)

As is apparent from the police reports (Appendix E) (Appendix F) and from the District Court order (Appendix D) substantial grounds for reasonable suspicion were developed AFTER Trooper Raes had already unlawfully extended the duration of the seizure through his questioning of Mr. Soderman, *supra*. For example, the discovery of “aftermarket wires” and the phone call with Mr. Soderman’s father, where the father indicated that Mr. Soderman had had some experience in the past with drugs, occurred AFTER the unlawful questioning by Trooper Raes, just like the alleged confusion in Mr. Soderman’s travel plans and most of the discussion about towing Mr. Soderman’s car. All of these occurred AFTER Trooper Raes’ unlawful questioning which extended the time of the traffic stop. *Id.*

On or about 2-27-19, Mr. Soderman pleaded guilty to violations of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(A) (Possession with Intent to Distribute “at least 50 grams of methamphetamine” on or about 7-7-18) (Count 1); 18 U.S.C. § 924(c)(1)(A) (Possession of a

¹ *Cf.* Illinois v. Caballes, 543 U.S. 405, 406, 125 S. Ct. 834, 836, 160 L. Ed. 2d 842 (2005), where an officer making a stop radioed dispatch to report it. A second officer “overheard the transmission and immediately headed for the scene with his narcotics-detection dog.” *Id.* The second officer conducted the dog sniff while the first officer “was in the process of writing a warning ticket[.]” *Id.* Thus, because there were multiple officers, one of them was able to conduct an unrelated inquiry without adding time to the stop. By contrast, in the instant case,

Firearm in Furtherance of Drug Trafficking, to wit, a Kel-Tec, P11, 9mm (serial # AP365) on or about 7-7-18) (Count 3). (Appendix B) The guilty plea was pursuant to Fed.R.Crim.P. 11(a)(2) and preserved Mr. Soderman's right to appeal the denial of his motion to suppress.

When the Presentence Report was prepared, the Probation Officer recommended finding a Total Offense Level 29 and a Criminal History of II which resulted in a guideline sentencing range of 97-121 months. However, the mandatory minimum for Count 1 was 120 months and for Count 3 it was 60 months consecutive. Consequently, Mr. Soderman's guideline sentencing range was 180 months mandatory minimum. (Presentence Report, page 38) (USDC Docket 1:18-cr-44, Entry # 48, PDF page 38).

On 8-20-19, Mr. Soderman was sentenced to 180 (120+60) months incarceration for violations of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(A) (Possession with Intent to Distribute "at least 50 grams of methamphetamine" on or about 7-7-18) (Count 1); 18 U.S.C. § 924(c)(1)(A) (Possession of a Firearm in Furtherance of Drug Trafficking, to wit, a Kel-Tec, P11, 9mm (serial # AP365) on or about 7-7-18) (Count 3). This sentence represented the mandatory minimum for the two consecutive sentences. (Appendix B)

The judgment was entered on 8-20-19.

On 8-28-19, a Notice of Appeal was filed. On direct appeal, counsel renewed his argument that, *inter alia*, Trooper Raes unlawfully extended the traffic stop.

On 12-21-20, the Court of Appeals denied Mr. Soderman's appeal. In denying the appeal, the Court of Appeals made the same omission as the district court had done by only determining that, *by the end of the stop*, police had developed a reasonable, articulable suspicion of drug trafficking. The lower court did NOT address the extensions to the time of the seizure that

Petitioner Soderman is complaining ONLY about the questioning and the searching for a K9

occurred PRIOR to development of reasonable suspicion; i.e. when Trooper Raes' unlawfully questioned Mr. Soderman as to crimes unrelated to the traffic stop or to the suspended license or when Trooper Raes spent time radioing in vain for a K9 to come and sniff Mr. Soderman's car as set forth above. Based on the lower court's incomplete findings under *Rodriguez*, that court affirmed the denial of Mr. Soderman's motion to suppress. (Appendix A)

Counsel timely filed a petition for rehearing. On 1-26-21, the Court of Appeals denied rehearing. (Appendix C)

Mr. Soderman demonstrates within that this Court should grant his Petition For Writ Of Certiorari because the court of appeals for the Eighth Circuit has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

BEFORE the second officer arrived.

REASONS FOR GRANTING THE WRIT

- 1.) **THIS COURT SHOULD GRANT MR. SODERMAN'S PETITION FOR WRIT OF CERTIORARI BECAUSE THE COURT OF APPEALS FOR THE EIGHTH CIRCUIT HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION**

Supreme Court Rule 10 provides in relevant part as follows:

Rule 10. CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

- (a) a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision ... *Id.*

Supreme Court Rule 10(a).

This Court has never hesitated to exercise its power of supervision where the lower courts have substantially departed from the accepted and usual course of judicial proceedings with resulting injustice to one of the parties. *McNabb v. United States*, 318 U.S. 332 (1943). As the Court stated in *McNabb*:

... the scope of our reviewing power over convictions brought here from the federal courts is not confined to ascertainment of Constitutional validity. Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence.

McNabb, 318 U.S. at 340.

1A.) The Fourth Amendment Was Violated Under *Rodriguez v. United States*, 575 U.S. 348 (2015) Where Individual Acts By Police To Investigate A Crime, Unrelated To A Traffic Stop And Unsupported By Reasonable Suspicion, Extended The Overall Time Of The Traffic Stop

Judicial precedent cautions that a traffic stop can become unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a warning ticket. The seizure remains lawful only so long as unrelated inquiries do not measurably extend the duration of the stop. An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But, he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual. *Rodriguez v. United States*, 575 U.S. 348, 355; 135 S. Ct. 1609, 191 L. Ed. 2d 492, 499 (2015); *United States v. Campbell*, 970 F.3d 1342 * | 2020 U.S. App. LEXIS 25844 ** (11th Cir. 2020) (construing *Rodriguez* and holding that *United States v. Clark*, 902 F.3d 404, 410-11 (3d Cir. 2018) (finding that 20 seconds of unrelated questioning prolonged the stop); *United States v. Bowman*, 884 F.3d 200, 219 (4th Cir. 2018) (finding that officer did not have consent or reasonable suspicion to question passenger after mission completed); *United States v. Gomez*, 877 F.3d 76, 88-93 (2d Cir. 2017) (concluding that it is not a reasonableness test but whether the unrelated inquiry adds time to the stop at all, and finding that asking a few questions about drugs prolonged the stop); *United States v. Gorman*, 859 F.3d 706 715 (9th Cir. 2017) (holding that unrelated questioning prolonged the stop); *United States v. Macias*, 658 F.3d 509, 518-19 (5th Cir. 2011) (deciding that unrelated questions violated the standard which says an officer can ask such questions only they do not extend the duration of the stop)).

Beyond determining whether to issue a traffic ticket, an officer's mission includes "ordinary inquiries incident to [the traffic] stop." *Rodriguez*, 575 U.S. at 355 (citing *Illinois v.*

Caballes, 543 U. S. 405, 408, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005)) Typically such inquiries involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance. *Id.*

However, “detect[ing] evidence of ordinary criminal wrongdoing ... is not an ordinary incident of a traffic stop”. *Rodriguez*, 575 U.S. at 356. While the government’s officer safety interest stems from the mission of the stop itself, on-scene investigation into other crimes detours from that mission. *Id.*; *Campbell*, 970 F.3d at 1356. “The seizure remains lawful only ‘so long as unrelated inquiries do not measurably extend the duration of the stop.’” *Rodriguez*, 575 U.S. at 355.

In other words, if a traffic stop is extended for any measurable time due to an inquiry or actions being made by police with the purpose of detecting evidence of ordinary criminal wrongdoing unrelated to the traffic stop, there must be “reasonable suspicion” of the criminal wrongdoing *at that time*² or the stop is violative of the Fourth Amendment. *Rodriguez*, 575 U.S. at 355.

In the instant case, as set forth above, at about 7:25 AM, Trooper Raes observed and clocked Petitioner Soderman driving his car 72 mph in a posted 55 mph zone on Interstate Highway 80 in Iowa. He activated his emergency lights and stopped Mr. Soderman’s vehicle. Upon checking his license, he discovered it was suspended due to alleged non-payment of child support which apparently surprised and upset Mr. Soderman. At this time, seeing that Mr. Soderman had substantial money in his wallet, Trooper Raes asked Mr. Soderman “how much

² “To prolong a stop *beyond that point*, the officer must have acquired reasonable suspicion during the mission to justify further investigation.” *United States v. Clark*, 902 F.3d 404, 410 (3d Cir. 2018) (emphasis added); *United States v. Morganstern*, No. 2:19-CR-212-DBH, 2020 U.S. Dist. LEXIS 240746, at *15 (D. Me. Dec. 22, 2020) (if unrelated inquiry about narcotics adds

money he had in his wallet”. Mr. Soderman replied that that was “irrelevant”. (Appendix E, ¶3) Trooper Raes then, apparently by radio, “requested a K9 to come to [his] location but Pottawattamie County sheriff’s office and council Bluffs police department had no K9s available.” *Id.* Finally, Trooper Raes asked Mr. Soderman “what was in the trunk” of his car, *Id.*, and “if there was any illegal items in the vehicle”. (Appendix F, ¶4).

Each of these inquiries was unrelated to the traffic stop for speeding or for possessing a suspended license. These questions were, instead, inquiring about “crime in general [and] drug trafficking in particular.” The questions prolonged the traffic stop by at least several minutes.

At that point, the articulated ‘suspicion’ was limited to the facts that Mr. Soderman had been stopped for speeding, provided his license and proof of insurance promptly, had energy drinks, snacks and a couple bags inside his car, appeared nervous and unkempt, and appeared more nervous after his drivers license came back suspended. (Appendix E) (Appendix F). Mr. Soderman respectfully submits that the officers did NOT have reasonable suspicion at that point.

On 11-7-18, counsel filed a motion to suppress. In this motion, counsel argued, *inter alia*, that Trooper Raes unlawfully extended the traffic stop. (USDC Docket 1:18-cr-44, Entry # 24-1, PDF pages 7-8)

On 12-17-18, a hearing was held on the motion to suppress. At the hearing the evidence essentially tracked the police reports attached as Appendices E-F. (USDC Docket 1:18-cr-44, Entry # 67)

On 1-17-19, the district court denied the motion to suppress. In denying the motion to suppress, the district court correctly acknowledged that “the “mission” of the stop evolved over its duration” but completely ignored the extensions of the length of the detention by Trooper

time to traffic stop “*when [police] did not have a reasonable suspicion of narcotics*”, stop is

Raes' questioning, prior to the arrival of the second officer, about the money in Mr. Soderman's wallet and by Trooper Raes' questioning, prior to the arrival of the second officer, about "what was in the trunk" of his car or "if there was any illegal items in the vehicle" and the time Trooper Raes used for calling and searching for "a K9 to come to [Trooper Raes'] location", prior to the arrival of the second officer. Instead, the district court simply held that, by the time the second officer, Officer Merchant, finished her investigation and questioning, reasonable suspicion had been established. While the district court held that the time of the stop was not extended by questioning about drugs because one of the officers was still working on the traffic tickets, this would be correct but ONLY after the second officer arrived³ and then held that, *by the end of the stop*, "they developed a reasonable, articulable suspicion of drug trafficking". (Appendix D, page 9)

As is apparent from the police reports (Appendix E) (Appendix F) and from the District Court order (Appendix D) substantial grounds for reasonable suspicion were developed AFTER Trooper Raes had already unlawfully extended the duration of the seizure through his questioning of Mr. Soderman, *supra*. For example, the discovery of "aftermarket wires" and the phone call with Mr. Soderman's father, where the father indicated that Mr. Soderman had had some experience in the past with drugs, occurred AFTER the unlawful questioning by Trooper Raes, just like the alleged confusion in Mr. Soderman's travel plans and most of the discussion

unconstitutional) (emphasis added) (citing *Rodriguez* and collecting authorities).

³ *Cf. Illinois v. Caballes*, 543 U.S. 405, 406, 125 S. Ct. 834, 836, 160 L. Ed. 2d 842 (2005), where an officer making a stop radioed dispatch to report it. A second officer "overheard the transmission and immediately headed for the scene with his narcotics-detection dog." *Id.* The second officer conducted the dog sniff while the first officer "was in the process of writing a warning ticket[.]" *Id.* Thus, because there were multiple officers, one of them was able to conduct an unrelated inquiry without adding time to the stop. By contrast, in the instant case, Petitioner Soderman is complaining ONLY about the questioning and the searching for a K9 BEFORE the second officer arrived.

about towing Mr. Soderman's car. All of these occurred AFTER Trooper Raes' unlawful questioning which extended the time of the traffic stop. *Id.*

On 8-28-19, a Notice of Appeal was filed. On direct appeal, counsel renewed his argument that, *inter alia*, Trooper Raes unlawfully extended the traffic stop.

On 12-21-20, the Court of Appeals denied Mr. Soderman's appeal. In denying the appeal, the Court of Appeals made the same omission as the district court had done by only determining that, *by the end of the stop*, police had developed a reasonable, articulable suspicion of drug trafficking. The lower court did NOT address the extensions to the time of the seizure that occurred PRIOR to development of reasonable suspicion; i.e. when Trooper Raes' unlawfully questioned Mr. Soderman as to crimes unrelated to the traffic stop or to the suspended license or when Trooper Raes spent time radioing in vain for a K9 to come and sniff Mr. Soderman's car as set forth above. Based on the lower court's incomplete findings under *Rodriguez*, that court affirmed the denial of Mr. Soderman's motion to suppress. (Appendix A)

The lower courts erred by failing to determine "what the police in fact [did]" and whether at each extension of the traffic stop the police had reasonable suspicion for their questioning and activities at that time. *Rodriguez*, 575 U.S. at 355-358.⁴

⁴ See also *United States v. Campbell*, 970 F.3d 1342 * | 2020 U.S. App. LEXIS 25844 ** (11th Cir. 2020) (construing *Rodriguez* and citing *United States v. Clark*, 902 F.3d 404, 410-11 (3d Cir. 2018) (finding that 20 seconds of unrelated questioning prolonged the stop); *United States v. Bowman*, 884 F.3d 200, 219 (4th Cir. 2018) (finding that officer did not have consent or reasonable suspicion to question passenger after mission completed); *United States v. Gomez*, 877 F.3d 76, 88-93 (2d Cir. 2017) (concluding that it is not a reasonableness test but whether the unrelated inquiry adds time to the stop at all, and finding that asking a few questions about drugs prolonged the stop); *United States v. Gorman*, 859 F.3d 706 715 (9th Cir. 2017) (holding that unrelated questioning prolonged the stop); *United States v. Macias*, 658 F.3d 509, 518-19 (5th Cir. 2011) (deciding that unrelated questions violated the standard which says an officer can ask such questions only they do not extend the duration of the stop)).

Based on the foregoing, the decision by the Court of Appeals for the Eighth Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision. *Id. McNabb v. United States*, 318 U.S. 332 (1943).

For all of the foregoing reasons, Petitioner Chad Alan Soderman respectfully prays that this Court **GRANT** certiorari, **VACATE** the judgment of the Court of Appeals for the Eighth Circuit and **REMAND** to the lower court for **RECONSIDERATION** in light of *Rodriguez v. United States*, 575 U.S. 348, 355; 135 S. Ct. 1609, 191 L. Ed. 2d 492, 499 (2015) with **FINDINGS** as to whether reasonable suspicion of drug trafficking was developed prior or subsequent to the unlawful extension of the traffic stop by Trooper Raes' questions and efforts to detect evidence of ordinary criminal wrongdoing which occurred prior to the arrival of the second officer.

1B.) Multiple Errors In The Courts Below Mandate That Mr. Soderman's Conviction And/Or Sentence Be Vacated.

Mr. Soderman's conviction and sentence are violative of the First, Second, Fourth, Fifth, Sixth, And Eighth Amendments to the constitution. More specifically, Mr. Soderman's conviction and sentence are violative of his right to freedom of speech and to petition and his right to keep and bear arms and his right to be free of unreasonable search and seizure, his right to due process of law, his rights to counsel, to jury trial, to confrontation of witnesses, to present a defense, and to compulsory process, and his right to be free of cruel and unusual punishment under the constitution.

The evidence was insufficient. The government falsified and withheld material evidence. The District Court unlawfully determined Mr. Soderman's sentence.

In *District of Columbia v. Heller*, 128 S. Ct. 2783; 171 L. Ed. 2d 637; 2008 U.S. LEXIS 5268 (2008), this Court held that the Second Amendment protected an individual right to possess a firearm unconnected with service in a militia and to use that firearm for traditionally lawful purposes, such as self-defense within the home.

The type of gun in the instant offense was one commonly found in the home.

The underlying crime which caused Mr. Soderman to become a "felon" was nonviolent.

Petitioner's conduct in the instant case was for keeping rather than bearing the firearm.

The punishment which petitioner received was severe; a prison sentence of 180 (120+60) months incarceration. The Second Amendment does not allow the state to prohibit an individual from self defense or defense of his home simply because he had some kind of prior state or federal offense deemed a felony. Perhaps if an individual was found to have violently used a firearm contrary to the law, the framers of the Constitution would have agreed that this precluded their right to further possession of firearms. But to say that the framers of the Constitution

intended that citizens can or should be denied their right to be secure in their homes simply because he had some kind of prior state or federal offense deemed a felony not only flies in the face of the history of our country but is contrary to the express words of both the Second Amendment and the Fourth Amendment. Based on the foregoing, Mr. Soderman's conviction and sentence for violation of 18 U.S.C. § 922(g)(1) is violative of the Second Amendment and should be vacated. *District of Columbia v. Heller*, 128 S. Ct. 2783; 171 L. Ed. 2d 637; 2008 U.S. LEXIS 5268 (2008)

Based on the foregoing, Mr. Soderman's conviction and sentence for violation of 18 U.S.C. § 922(g)(1) is violative of the Second Amendment and should be vacated.

These claims in Argument 1B are submitted to preserve Mr. Soderman's right to raise them in a motion pursuant to 28 U.S.C. § 2255 if this Court declines to reach their merits.

CONCLUSION

For all of the foregoing reasons, Petitioner Chad Alan Soderman respectfully prays that this Court **GRANT** certiorari, **VACATE** the judgment of the Court of Appeals for the Eighth Circuit and **REMAND** to the lower court for **RECONSIDERATION** in light of *Rodriguez v. United States*, 575 U.S. 348, 355; 135 S. Ct. 1609, 191 L. Ed. 2d 492, 499 (2015) with **FINDINGS** as to whether reasonable suspicion of drug trafficking was developed prior or subsequent to the unlawful extension of the traffic stop by Trooper Raes' questions and efforts to detect evidence of ordinary criminal wrongdoing which occurred prior to the arrival of the second officer.

Chad Alan Soderman
Petitioner
44905-013
9595 West Quincy Avenue
Littleton, CO 80123

Date: _____